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APR 05 2005

In re Application of :
Takanobu Kamakura : DECISION ON PETITION
Serial No.: 08/578,980 : TO WITHDRAW THE
Filed: December 27, 1995 : HOLDING OF ABANDONMENT
Attorney Docket No.: 39-5461-0 :
:

This is a decision on the petition to withdraw the holding of abandonment filed on October 6, 2003. There is no fee for this petition.

The petition is **GRANTED**.

A decision by the Board of Appeals and Interferences (Board) affirming the examiner's rejection was mailed on February 19, 2002. Applicant filed a request for reconsideration under 37 C.F.R. § 1.197(b) on April 10, 2002. The Board denied this request in a letter mailed on June 27, 2003. Although the Notice of Abandonment is not in the application file, other records indicate that the application was held abandoned and a Notice of Abandonment was mailed on August 6, 2003.

The mailing of a Notice of Abandonment on August 6, 2003 was at the very least premature. As noted in the petition, 37 C.F.R. § 1.304 provides two months from the action on a request for reconsideration under 37 C.F.R. § 1.197(b) to file an appeal. Thus, applicant had to August 27, 2003 to file an appeal from the decision of the Board.

Petitioner asserts that while the application was still pending, a Request for Continued Examination (RCE) was filed under 37 C.F.R. § 1.114 with an amendment. To support this assertion, petitioner provided a copy of the RCE, the amendment and a copy of a stamped return postcard that properly identifies and acknowledges receipt of the RCE and amendment by the United States Patent and Trademark Office (PTO) on August 22, 2003.

A review of the application file reveals that the RCE and amendment filed on August 22, 2003 is now in the application file. Since the filing of the RCE was clearly timely under the provisions of 37 C.F.R. § 1.114 and 37 C.F.R. § 1.304, the Notice of Abandonment mailed on August 6, 2003 is hereby **VACATED** and the holding of abandonment is withdrawn.

The application file is being forwarded to the Technology Center 2800 support staff for processing of the RCE and amendment. The application file will then be forwarded to the examiner in charge for the preparation of an Office action considering the amendment filed with the RCE.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



Sharon A. Gibson, Director
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